

**OPEN RECORDS AND MEETINGS OPINION
2010-O-10**

DATE ISSUED: July 1, 2010

ISSUED TO: Kindred City Council

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Vern Williams asking whether the Kindred City Council's Tax Increment Financing Committee held meetings that were not preceded by public notice.

FACTS PRESENTED

The Kindred City Council (Council) held a special meeting on January 20, 2010. At the meeting, it appointed a committee to create a policy to govern Tax Increment Financing (TIF) issues, including calculation and application of excess increments. Two council members were appointed to sit on the committee along with the city auditor and an accountant. The committee met February 23 and April 21, 2010, at city hall without providing public notice.

ISSUE

Whether public notice of the Kindred TIF Committee meetings was provided in substantial compliance with N.D.C.C. § 44-04-20.

ANALYSIS

"Except as otherwise specifically provided by law, all meetings of a public entity must be open to the public."¹ A governing body includes "any group of persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body."² It is well-established that a committee of a city council, exercising authority delegated to the committee by its council, is a governing body.³ Public notice must be given in advance of all meetings of a public entity.⁴ For emergency or special

¹ N.D.C.C. § 44-04-19.

² N.D.C.C. § 44-04-17.1(6) (definition of governing body).

³ See, e.g., N.D.A.G. 2009-O-03; N.D.A.G. 2007-O-15; N.D.A.G. 2004-O-22; N.D.A.G. 2004-O-15.

⁴ N.D.C.C. § 44-04-20.

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meetings, the presiding officer of the governing body must assure that notice is given to the public entity's official newspaper, as well as to anyone who has requested notice, at the same time the notice is given to members of the governing body.⁵

Mr. Williams alleges that the TIF Committee held meetings that were not noticed to the public and that he did not receive personal notice of the meetings which he had requested. The Council does not dispute that notice of the TIF Committee meetings were not provided to either the newspaper or Mr. Williams. The Council explains that it was an oversight that it has since rectified.

CONCLUSION

It is my opinion that public notice of the Kindred TIF Committee meetings was not provided in substantial compliance with N.D.C.C. § 44-04-20.

STEPS NEEDED TO REMEDY VIOLATION

According to the Council it has started to provide proper notice of TIF Committee meetings. At the May 27, 2010, meeting the committee discussed what occurred at the previous meetings. Minutes from the February 23 and April 21, 2010, meetings were drafted, approved, and published. If it has not already done so, the Council should also provide the minutes to Mr. Williams and provide notice to him of any meetings of the Committee.

Failure to take the corrective measures described in this opinion within seven days of the date this opinion is issued will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2.⁶ It may also result in personal liability for the person or persons responsible for the noncompliance.⁷

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Attorney General

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⁵ N.D.C.C. § 44-04-20(6). See also N.D.A.G. 2009-O-10.

⁶ N.D.C.C. § 44-04-21.1(2).

⁷ Id.